

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION No. 8490 of 2005****For Approval and Signature:****HON'BLE MR JUSTICE AKIL KURESHI**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?
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LALBHAI GANESHBHAI - Petitioner(s)

Versus

STATE OF GUJARAT THR' SECRETARY & 3 - Respondent(s)

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Appearance :

MR MA KHARADI for Petitioner No(s).: 1.

MR PR ABICHANDANI, AGP for Respondent No(s).: 1, 2, 3,4.

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CORAM : HON'BLE MR JUSTICE AKIL KURESHI

Date : 02/08/2005

ORAL JUDGMENT

Learned AGP places on record a copy of the parawise remarks received from the Government as also the communication dated 1st August 2005.

2. In the present petition, the petitioner has challenged the validity of the order dated 9.7.2001 by which the Government precluded the petitioner from disposing of the land in question by sale, gift, mortgage or in any other manner and also directed to enter this fact in the revenue records pertaining to the land in question.

3. For a certain piece of land bearing revenue survey No.90 of village Rander, admesuring 1 hactare 63 Are and 90 Sq. meters, proceedings under section 70(o) of the Bombay Tenancy and Agricultural Lands Act were initiated by the petitioner praying that the petitioner be declared as a permanent tenant and that the restriction of new tenure land with respect to the land in question should be deleted. The Mamlatdar and ALT, Choryasi by his order dated 31.8.2000 rejected the application of the petitioner. The petitioner appealed against the said order of the Mamlatdar and ALT and the Deputy Collector, Choryasi Prant, Surat by his order dated 9.4.2001 was plesed to allow the appeal of the petitioner and was pleased to declare that the petitioner holds the land in question as a old tenure land and the restrictions on the land in question under section 43 of the Bombay Tenancy

and Agricultural Lands Act should be removed from the record of rights. After passing of the said order by the Deputy Collector, the Collector, Surat by his order dated 9th July 2001, as noted earlier, indicated that the petitioner should not sell, gift, lease or in any other manner transfer the land in question since the Government is taking a final decision in this regard.

4. The petitioner has stated in the petition that respondent No.2 did not have any authority to pass the order dated 9.7.2001 and that till date no decision has been given by respondent No.1 and the action on the part of respondent Nos.1 & 2 violates the fundamental rights of the petitioner.

5. Learned AGP Shri Abichandani on the basis of the written instructions admitted that after passing the order dated 9th July 2001, no further steps have been taken by respondent Nos.1 & 2 to challenge the order passed by the Deputy Collector. The order of the Deputy Collector has thus become final and though there was at some stage a proposal to challenge the same before the Gujarat Revenue Tribunal, it is not possible for the respondents to deprive the petitioner from receiving the

benefits of the order dated 9.4.2001 passed by the Deputy Collector indefinitely. After precluding the petitioner from disposing of the land in question by passing an order dated 9.7.01 till the Government takes decision in this regard, no further steps have been taken to question the order passed by the Deputy Collector. The order of the Deputy Collector having achieved finality and having been passed more than four years back, it is now no longer possible to withhold the benefits thereof accruing to the petitioner. The impugned order dated 9.7.2001 is therefore cannot be sustained any longer. The same is therefore quashed and set aside. Rule is made absolute accordingly with no order as to costs.

(Akil Kureshi, J.)

(vjn)